STATE OF MICHIGAN

COURT OF APPEALS

MOTHER OF JOHN DOE, next friend of JOHN DOE, Plaintiff-Appellee, v RENEE BOYLE and MICHAEL HAND, Defendants, and DEPARTMENT OF HUMAN SERVICES, Defendant-Appellee, and THOMAS E. WOODS, Appellant.	UNPUBLISHED December 10, 2013 No. 310725 Ingham Circuit Court LC No. 07-000906-NO

Before: METER, P.J., and SERVITTO and RIORDAN, JJ.

PER CURIAM.

Appellant appeals by leave granted from an order of the circuit court denying appellant's motion for entry of a final judgment.[1] We reverse.

This appeal stems from an action for money damages initially filed in 2006 by plaintiff John Doe, through his mother as next friend against then minor defendant Michael Hand and Hand's foster mother, defendant Renee Boyle, for injuries John Doe sustained through actions of Hand. The Michigan Department of Human Services and the Wexford-Missaukee County

[1] *Doe v Boyle*, unpublished order of the Court of Appeals, entered May 28, 2013 (Docket No. 310725).

Department of Human Services were also named as defendants in that lawsuit as they served as court-appointed guardians for Hand at the time of the incident. On October 12, 2007, the circuit court dismissed the claims against defendants Department of Human Services (DHS) and Wexford-Missaukee County DHS without prejudice.[2] Relevant to the instant matter, appellant Thomas E. Woods was appointed the guardian ad litem for minor defendant, Mike Hand, on January 23, 2008.

On August 25, 2009, defendant Boyle filed for Chapter 7 Bankruptcy, and obtained an automatic stay of the proceedings against her in this matter.[3] On December 22, 2009, defendant Boyle was granted a discharge in bankruptcy by the Bankruptcy Court for the Western District of Michigan. This discharge was entered in the circuit court's register of actions. Pursuant to 11 USC § 362(c)(2)(C), the stay ended upon the grant of the discharge.

On July 22, 2010 appellant filed a motion with the circuit court seeking payment for his services as guardian ad litem from the Department of Human Services. The circuit court denied the petition, as well as the motion for reconsideration that followed. On June 24, 2011, appellant was relieved of his duties by the circuit court, as defendant Hand had reached the age of majority and no longer required a guardian ad litem. On July 19, 2011, plaintiff and defendant Hand entered into a consent judgment for $1,000,000. On July 22, 2011, after stipulation by the parties, the circuit court dismissed defendant Hand from the instant case.

Twenty-one days later, on August 12, 2011, appellant filed a claim of appeal from the order dismissing defendant Hand, asserting that said order was the final judgment in the case from which he could challenge the circuit court's decision to deny his petition for guardian ad litem fees. Following a motion to dismiss by plaintiff, this Court dismissed the appeal for lack of

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[2] Plaintiff later filed suit against these two parties in the Court of Claims, where the claims were dismissed on the basis of governmental immunity and failure to state a claim, and this Court affirmed. *Doe v Dept of Human Services*, unpublished opinion per curiam of the Court of Appeals, issued December 8, 2009 (Docket No. 285274).

[3] 11 USC § 362(a)(1) provides:

> **(a)** Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--
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> **(1)** the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title[.]

jurisdiction.[4] Thereafter, appellant filed a motion asking the circuit court to issue a final judgment dismissing defendant Boyle from the litigation. In support of the motion, appellant argued that dismissal of defendant Boyle was required to dispose of the last remaining claim in the case. In opposition, plaintiff argued that the discharge granted to defendant Boyle by the bankruptcy court disposed of all claims against her, and that the consent judgment entered into by plaintiff and defendant Hand resolved the last remaining claim in the case. Following oral arguments, the circuit court denied appellant's motion, stating that the case had already been closed. On June 12, 2012, appellant applied for leave to appeal, which this Court granted.

The trial court's "interpretation of a court rule, like a matter of statutory interpretation, is a question of law that this Court reviews de novo." *CAM Constr v Lake Edgewood Condo Ass'n*, 465 Mich 549, 553; 640 NW2d 256 (2002). When a ruling involves an interpretation of the law or the application of law to uncontested facts, appellate review is also de novo. *People v Lewis*, 302 Mich App 338; __ NW2d __ (2013).

Under MCR 7.203(A)(1), this Court "has jurisdiction of an appeal of right filed by an aggrieved party from . . . [a] final judgment or final order of the circuit court." [Paragraph structure omitted; alteration added.] Under MCR 7.202(6)(a)(i), a "final judgment" in a civil case is "the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after reversal of an earlier final judgment or order." "[A] party claiming an appeal of right from a final order is free to raise issues on appeal related to prior orders." *Green v Ziegelman*, 282 Mich App 292, 301 n 6; 767 NW2d 660 (2009) (internal quotation marks and citation omitted; alteration by *Green*).

Appellant asserts that the trial court erred by finding that the instant case was closed and refusing to enter a written order dismissing defendant Boyle from the case, when the claim against defendant Boyle had never been adjudicated. We agree.

The record reflects that Boyle filed for bankruptcy in August, 2009 and a notice of the same was provided to the trial court. Notably, the trial court entered an "Order for Administrative Closing Due To Bankruptcy Stay", employing a Michigan State Court Administrative Office approved court form, closing the case as to Boyle only, without prejudice. Thus, although 11 USC § 362(a)(1) directs that a bankruptcy petition operates as an "automatic" stay of pending judicial proceedings to recover a claim against a debtor, the trial court found it necessary to enter a written order staying the proceeding against Boyle. To be sure, it is well settled that, generally, a court only speaks through its written orders. E.g., *Brausch v Brausch*, 283 Mich App 339, 353; 770 NW2d 77 (2009); *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009). Also notable, the language in the order specifically states "this closing does not constitute a dismissal or a decision on the merits" and provides that when the bankruptcy stay has been removed, the case may be reopened on motion of any party.

[4] *Doe v Boyle*, unpublished order of the Court of Appeals, issued November 2, 2011 (Docket No. 305627).

On December 30, 2009 a "Discharge of debtor" from the bankruptcy court was filed with respect to Boyle. The discharge provided that Boyle was granted a discharge under 11 USC § 727. Under federal law, a discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived." 11 USC §524(a)(2). However, the above provision has been interpreted to mean only that the collection the debtor's personal liability for the debt is rendered unenforceable—not that a pending action is extinguished by the debtor's discharge. See, e.g. *In re Rodgers*, 266 B R 834, 836 (Bkrtcy WD Tenn, 2001). Recognizing that many states require that the debtor be a named party when, for example, recovery is sought from the debtor's insurer, the bankruptcy court indicated that it is well settled that it is permissible to commence or continue prosecution against a debtor as a nominal defendant when the same is necessary to prove liability as a prerequisite to recovery, despite the language of 11 USC § 524(a). *Id*. "Simply put, the discharge injunction under 11 USC § 524(a) is intended for the benefit of the debtor; it is not meant to affect the liability of third parties or to prevent establishing such liability through whatever means required." *Id*. at 836. This is because, "[t]he discharge injunction of 11 USC § 524 does not extinguish a debt, but prohibits debt collection and relieves the debtor from personal liability on the debt and enjoins a creditor with a discharged claim from commencing or continuing actions to collect on any such debt." *In re Harris*, 85 B R 858, 863 (Bkrtcy D Colo, 1988). The discharge provision, then, has a very specific, very limited purpose, and it is decidedly not to act as a de facto dismissal of a debtor from each and every pending lawsuit in which he or she may be named as a defendant.

Further, while any actions, including state judicial decrees, in violation of a bankruptcy injunction are void, (See, e.g., *Flores v Kmart Corp*, 202 Cal App 4th 1316, 1327; 136 Cal Rptr 3d 437 (Cal App 2 Dist, 2012)), the action appellant sought in the instant matter was not in violation of the bankruptcy injunction. The dismissal of Boyle, would be, in fact, consistent with the bankruptcy injunction in that no one in the lawsuit would be able to continue to seek damages against the Boyle for the pre-bankruptcy claim.

Finally, MCR 2.604(A) provides that "Except as provided in subrule (B), an order or other form of decision adjudicating fewer than all the claims, or the rights and liabilities of fewer than all the parties, does not terminate the action as to any of the claims or parties. . ." "Adjudicate" means "to rule upon judicially" or "adjudge." Black's Law Dictionary, 7th Ed. MCR 2.602(A)(1) *requires* that all judgments and orders (i.e rulings) must be in writing, signed by the court and dated with the date they are signed. The trial court in this case did not adjudicate the rights of Boyle by entering an order of dismissal, even if doing so would be viewed as a mere formality to put into written order either the directive of the bankruptcy court if that was how the court interpreted the pertinent USC provision, or the understanding of all of the parties as to Boyle's further necessity in the proceedings. The matter against Boyle having not been adjudicated through a written order of the trial court, the trial court erred by finding that the instant case was closed and in refusing to enter a written order dismissing defendant Boyle from the case.

Appellant also asserts on appeal that no final judgment has been entered in this case because the claims against defendant DHS and defendant Wexford-Missaukee County DHS were merely dismissed without prejudice. Appellant, however, failed to preserve this issue before the

circuit court. Further, plaintiff later pursued those dismissed claims in the court of claims, where they were fully resolved. Accordingly, further pursuit of those claims in the circuit court would be barred by res judicata, as those claims have been adjudicated.

Reversed as to appellant's claim that the trial court erred in finding that the case concerning Boyle had been closed and the matter is remanded to the trial court for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Michael J. Riordan